



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0370; FRL-10019-18-Region 4]

Air Plan Approval; KY; Updates to Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on December 9, 2019. The SIP revision updates the description and attainment status designations of geographic areas within the Commonwealth for several National Ambient Air Quality Standards (NAAQS or standards). The updates are being made to conform Kentucky's attainment status tables with the federal attainment status designations for these areas. EPA is approving Kentucky's SIP revision because it is consistent with the Clean Air Act (CAA or Act) and EPA's regulations.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0370. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah Larocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9144. Ms. Larocca can also be reached via electronic mail at larocca.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 108 and 109 of the CAA require EPA to set NAAQS for criteria air pollutants (ozone (O₃), particulate matter (PM), carbon monoxide, lead, sulfur dioxide (SO₂), and nitrogen dioxide) and to undertake periodic review of these standards. After EPA sets a new NAAQS or revises an existing standard, the CAA requires EPA to determine if areas of the country meet the new standards and to designate areas as either nonattainment, attainment, or unclassifiable.¹ Such designations inform the state's planning and implementation of requirements to achieve and maintain the NAAQS for each area within that state.

Section 107(d) of the CAA governs the process for these initial area designations. Under this process, states and tribes submit recommendations to EPA as to whether or not an area is attaining the NAAQS for criteria air pollutants. EPA then considers these recommendations as part of its obligation to promulgate the area designations for the new or revised NAAQS. EPA

¹ An area is designated nonattainment if it is found to be an area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS; an area is designated attainment if it is an area that meets the NAAQS and does not contribute to an area violating the NAAQS; and an area is designated unclassifiable if it cannot be classified on the basis of available information as meeting or not meeting the NAAQS. *See* CAA section 107(d)(1)(A).

codifies its designations for areas within each state in 40 CFR Part 81.² Under section 107(d) of the CAA, a designation for an area remains in effect until redesignated by EPA.

In a notice of proposed rulemaking (NPRM) published on October 19, 2020 (85 FR 66295), EPA proposed to approve changes to Kentucky rule 401 Kentucky Administrative Regulation (KAR) 51:010, *Attainment status designations*, which update the description and attainment or nonattainment status of geographic areas within the Commonwealth with regard to a number of the NAAQS. The Commonwealth of Kentucky last amended Regulation 401 KAR 51:010 in 2016.³ Since that time, EPA promulgated the 2015 8-hour ozone NAAQS and redesignated several areas within the Commonwealth. Kentucky amended 401 KAR 51:010 in 2019 by updating the attainment status designations in Sections 7 through 9 for O₃, PM less than 2.5 microns in diameter (PM_{2.5}), and SO₂ to conform with EPA's attainment status designations in 40 CFR 81.318. Regulation 401 KAR 51:010 has also been amended by making one minor textual modification to the NECESSITY, FUNCTION, AND CONFORMITY section. The details of Kentucky's submission and the rationale for EPA's action are explained in the proposed rulemaking. Comments on the October 19, 2020, NPRM were due on or before November 18, 2020. EPA did not receive any comments on the October 19, 2020, NPRM. EPA is now taking final action to approve the above-referenced changes.

II. Incorporation by Reference

In this notice, EPA is finalizing EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Kentucky regulation 401 KAR 51:010, *Attainment status designations*, state effective November 19, 2019, which was revised to be consistent with the federal attainment status designations for the areas within the Commonwealth. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4

² EPA's attainment status designations for Kentucky are found at 40 CFR 81.318.

³ EPA approved those amendments into the SIP in 2018. See 83 FR 65088 (December 19, 2018).

Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the *Federal Register* in the next update to the SIP compilation.⁴

III. Final Action

EPA is taking final action to approve portions of the Commonwealth of Kentucky’s SIP revision submitted on December 9, 2019, because the changes are consistent with the CAA and EPA regulations. The submission amends and updates Kentucky regulation 401 KAR 51:010, *Attainment status designations*, to conform with EPA’s attainment status designations in 40 CFR 81.318. EPA is proposing to approve these changes because they are consistent with the CAA and EPA regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

⁴ *See* 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 23, 2021.

John Blevins,

Acting Regional Administrator,

Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S - Kentucky

2. In 52.920, amend Table 1 in paragraph (c) under the heading Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards by revising the entry for “401 KAR 51:010 Attainment status designations” to read as follows:

§52.920 Identification of plan.

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(c) * * *

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards				
**	**	*	*	*
401 KAR 51:010	Attainment status designations	11/19/2019	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
**	**	*	*	*

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[FR Doc. 2021-04057 Filed: 2/26/2021 8:45 am; Publication Date: 3/1/2021]